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DEPOSITION OF BERT MEYER TAKEN 08/31/04

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CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

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**EXHIBIT D**

## DEPOSITION OF BERT MEYER TAKEN 08/31/04

BSA

XMAX(1/1)

## Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAIIBERT MEYER, ) CIVIL NO. 04-00049 HG/BMK  
) (In Admiralty)

Plaintiff, )

vs. )

MATSON NAVIGATION COMPANY, )  
INC., )

Defendant. )

## DEPOSITION OF BERT MEYER

Taken on behalf of the Defendant MATSON NAVIGATION  
COMPANY, INC., at the law offices of Goodsill,  
Anderson, Quinn & Stifel, 1099 Alakea Street, 1800  
Ali'i Place, Honolulu, Hawaii 96813, commencing at  
9:50 a.m., on Tuesday, August 31, 2004, pursuant to  
Notice.

BEFORE: MYRLA R. SEGAWA, CSR No. 397  
Notary Public, State of Hawaii

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## APPEARANCES:

For Plaintiff BERT MEYER:

PRESTON EASLEY, ESQ.  
2500 Via Cabrillo Marina, Suite 106  
San Pedro, California 90731-7724

For Defendant MATSON NAVIGATION COMPANY, INC.:  
JOHN R. LACY, ESQ.  
Goodsill, Anderson, Quinn  
& Stifel  
1800 Alii Place  
1099 Alakea Street  
Honolulu, Hawaii 96813

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(Disclosure presented to all counsel.)

BERT MEYER,

called as a witness by and on behalf of the  
Defendant, having been first duly sworn to tell the  
truth, the whole truth and nothing but the truth, was  
examined and testified as follows:

## EXAMINATION

BY MR. LACY:

Q Please state your name.

A Bert Meyer.

Q And Mr. Meyer, your address?

A 91-1023 Lipo Street, Kapolei, Hawaii,  
96707.

Q And Mr. Meyer, what is your current age?

A Thirty-seven.

Q Mr. Meyer, have you had your deposition  
taken before?

A No.

Q Okay. I'm sure you've talked with  
Mr. Easley about the process, but let me go over a  
few of the ground rules. One, I'm going to be asking  
you some questions today that go back several years.  
If you can't recall something or don't recall, please  
tell me that. Don't guess or speculate. Okay?

A Yes.

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- (1) reports before?
- (2) **A Yes.**
- (3) **Q On how many occasions?**
- (4) **A One.**
- (5) **Q And what kind of an accident were you**
- (6) **involved in previously?**
- (7) **A I had my thumb jammed in a doorjamb of a**
- (8) **car.**
- (9) **Q And did you lose any time from work?**
- (10) **A No.**
- (11) **Q Before preparing this report on October 1,**
- (12) **2002, did you discuss what was to be included in the**
- (13) **report with anyone?**
- (14) **A No.**
- (15) **Q Under about two-thirds of the middle of the**
- (16) **page, it says witnesses to accident. You have none?**
- (17) **A Yes.**
- (18) **Q Is that correct?**
- (19) **A Yes.**
- (20) **Q So to your knowledge no one saw what**
- (21) **happened?**
- (22) **A Yes.**
- (23) **Q Let me ask you differently. Did anyone see**
- (24) **the accident happen?**
- (25) **A No.**

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- (1) **Q Did you visit the accident scene with**
- (2) **Mr. Antone?**
- (3) **A No.**
- (4) **Q Do you recall him asking you any questions**
- (5) **about it?**
- (6) **A No.**
- (7) **Q Do you recall any discussion with him?**
- (8) **A No.**
- (9) **Q Did you actually see him that night?**
- (10) **A Yes.**
- (11) **Q Okay. And did you physically hand him the**
- (12) **form?**
- (13) **A Yes.**
- (14) **Q Did you discuss anything with him when you**
- (15) **handed him the form?**
- (16) **A No.**
- (17) **Q So you didn't say like I had this incident,**
- (18) **and I just wanted to fill out this report or not even**
- (19) **a casual comment?**
- (20) **A No.**
- (21) **Q Did you speak with anyone else from Matson**
- (22) **that evening, Matson Terminals I should say?**
- (23) **A I don't understand.**
- (24) **Q Well, after this accident happened, you**
- (25) **handed Mr. Antone the form. Did you speak with**

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- (1) anybody else that you knew was employed by Matson
- (2) Terminals about the accident?
- (3) **A No.**
- (4) **Q Do you know Dan Farney?**
- (5) **A Yes.**
- (6) **Q Did you see Dan Farney that night?**
- (7) **A At the time of the accident.**
- (8) **Q Did you ever speak with him about the**
- (9) **accident?**
- (10) **A Yes, I did.**
- (11) **Q What do you recall discussing with**
- (12) **Mr. Farney?**
- (13) **A Well, he helped me get out of the hole, and**
- (14) **I needed to -- I asked him if I needed to fill out an**
- (15) **accident report.**
- (16) **Q What did he say?**
- (17) **A Yes.**
- (18) **Q Where was Mr. Farney when you had the**
- (19) **accident?**
- (20) **A I don't know.**
- (21) **Q And when you say he helped you out of the**
- (22) **hole, what did he do?**
- (23) **A He pushed up on my left leg.**
- (24) **Q And do you recall any details of the**
- (25) **discussion you had with Mr. Farney when he helped you**

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- (1) out of the hole?
- (2) **A When he first came up, he was pretty funny.**
- (3) **He had mentioned he wished he had a camera because no**
- (4) **one is going to believe how I looked.**
- (5) **Q And did you know what he meant by how you**
- (6) **looked?**
- (7) **A No.**
- (8) **Q Okay. And then what do you recall being**
- (9) **said after that?**
- (10) **A I don't recall.**
- (11) **Q Did you tell Mr. Farney that you had**
- (12) **injured yourself?**
- (13) **A I told him I was hurt.**
- (14) **Q You told him you were hurt?**
- (15) **A Yes.**
- (16) **Q Did you tell him anything as far as**
- (17) **specifics about where you were hurt?**
- (18) **A No.**
- (19) **Q And what did you mean when you said you**
- (20) **were hurt?**
- (21) **A I'm just numb.**
- (22) **Q Where were you numb?**
- (23) **A My whole left side.**
- (24) **Q So from your toe all the way to the left**
- (25) **side of your body?**

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- (1) **A** No, I can't recall.
- (2) **Q** I know you were telling me that the tenders
- (3) did have lights in the back. Where were the lights
- (4) in relationship to the containers that were behind
- (5) you?
- (6) **A** I don't recall.
- (7) **Q** Did you have any problems in seeing the
- (8) grate?
- (9) **A** No.
- (10) **Q** Were you able to see the padeye?
- (11) **A** Yes.
- (12) **Q** Now, you were describing that you stepped
- (13) on a padeye in order to get as close as you could to
- (14) the container?
- (15) **A** Yes.
- (16) **Q** And which foot did you put on the padeye?
- (17) **A** My left.
- (18) **Q** And where was your right foot?
- (19) **A** On the grate.
- (20) **Q** So you kind of stepped forward?
- (21) **A** Yes.
- (22) **Q** Did you ever put all of your weight on your
- (23) left foot?
- (24) **A** I don't recall.
- (25) **Q** Did you ever bring your right foot up to

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- (1) the top of the hatch cover?
- (2) **A** No.
- (3) **Q** Did it remain on the grate at all times?
- (4) **A** Yes.
- (5) **Q** Now, was there any kind of foreign
- (6) substance on the grate?
- (7) **A** Yes.
- (8) **Q** And what?
- (9) **A** I believe it was the animals' urine and
- (10) feces all over everything. There was some slime and
- (11) some solid waste here and there.
- (12) **Q** Now, had you seen the feces on the grate?
- (13) **A** Yes.
- (14) **Q** And where did you see the feces?
- (15) **A** It was on the grate, the hatch cover.
- (16) **Q** Okay. And you're talking about the grate
- (17) where?
- (18) **A** The catwalk.
- (19) **Q** Okay. So was it all along the catwalk on
- (20) row 15?
- (21) **A** The slime is everywhere. There's solid
- (22) waste here and there.
- (23) **Q** And when you refer to slime, what are you
- (24) referring to?
- (25) **A** Just everything mixed together in a liquid

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- (1) form.
- (2) **Q** And do you know how it had got up to the
- (3) grate?
- (4) **A** Well, the containers are right there and
- (5) they just swirl around in the air and then they do
- (6) tend to shoot out. I mean, the animals are right up
- (7) against the opening of the containers.
- (8) **Q** Were there openings in the containers that
- (9) were along the grate level?
- (10) **A** Yes.
- (11) **Q** On row 15?
- (12) **A** Yes, I believe there was.
- (13) **Q** Now, did you report seeing the slime in
- (14) some places the feces on the grate to anyone?
- (15) **A** Yes.
- (16) **Q** Who?
- (17) **A** I complained about it to Danny Farney.
- (18) **Q** And was this before or after the incident?
- (19) **A** While we were walking up when we first got
- (20) up on the ship.
- (21) **Q** I'm sorry?
- (22) **A** When we first got up on the ship.
- (23) **Q** So you told Danny Farney specifically that
- (24) there was feces and slime stuff on the grate?
- (25) **A** Usually when a ship comes in, you know,

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- (1) it's there and it's everywhere on the deck when
- (2) you're coming up there.
- (3) **Q** Okay. But particularly on this night of
- (4) October 1, do you recall specifically pointing it out
- (5) to Danny?
- (6) **A** No, not pointing it out. Just telling him.
- (7) **Q** And what did you tell him?
- (8) **A** That there's basically crap everywhere.
- (9) **Q** And what did he say?
- (10) **A** It's just a joke. He laughed.
- (11) **Q** Do you know anything about whether or not
- (12) the tenders wash down the area before the ship comes
- (13) in to the harbor?
- (14) **A** It doesn't seem like they do.
- (15) **Q** Have you ever talked with any of the
- (16) tenders about what is done about when the ship comes
- (17) into the harbor?
- (18) **A** No, I don't.
- (19) **Q** As you're walking on the grate that night,
- (20) did you lose your footing at any time before this
- (21) incident?
- (22) **A** Not that I can recall.
- (23) **Q** So when you told Danny about the slime and
- (24) feces, you say he laughed?
- (25) **A** Yeah, everybody laughs who gets stuck in

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(1) those falls?  
 (2) **A No.**  
 (3) **MR. LACY:** Okay. Mr. Meyer, that's  
 (4) all questions I have. Thank you.  
 (5) **MR. EASLEY:** Why don't you send me a  
 (6) copy of the transcript to my office in San Pedro, and  
 (7) I'll have him sign and correct the copy that I  
 (8) purchase. Is that agreeable, Mr. Lacy?  
 (9) **MR. LACY:** That's fine.  
 (10) **(Deposition concluded at 1:12 p.m.)**  
 (11)  
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 (23)  
 (24)  
 (25)

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(1) I, BERT MEYER, do hereby certify that I  
 (2) have read the foregoing pages 1 through 137,  
 (3) inclusive, and corrections, if any, were noted by me;  
 (4) and that same is now a true and correct transcript of  
 (5) my testimony.  
 (6) **DATED:** Honolulu, Hawaii, \_\_\_\_\_.  
 (7)  
 (8)  
 (9) \_\_\_\_\_  
 (10) **BERT MEYER**  
 (11)  
 (12) Signed before me this \_\_\_\_\_  
 (13) day of \_\_\_\_\_, 2004.  
 (14)  
 (15) \_\_\_\_\_  
 (16)  
 (17)  
 (18)  
 (19)  
 (20)  
 (21)  
 (22)  
 (23) **Case: BERT MEYER vs. MATSON NAVIGATION**  
**Civil No.: 04-00049 HG.BMK**  
 (24) **Deposition Dated: August 31, 2004**  
**Taken By: Myrla R. Segawa**  
 (25)

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(1) **C E R T I F I C A T E**  
 (2) **STATE OF HAWAII )**  
**) SS:**  
 (3) **CITY AND COUNTY OF HONOLULU.)**  
 (4) **I, MYRLA R. SEGAWA, Notary Public, State of**  
 (5) **Hawaii, do hereby certify:**  
 (6) **That on Tuesday, August 31, 2004, at**  
 (7) **9:50 a.m., appeared before me BERT MEYER, the witness**  
 (8) **whose deposition is contained herein; that prior to**  
 (9) **being examined he was by me duly sworn;**  
 (10) **That the deposition was taken down by me in**  
 (11) **machine shorthand and was thereafter reduced to**  
 (12) **typewriting under my supervision; that the foregoing**  
 (13) **represents, to the best of my ability, a true and**  
 (14) **correct transcript of the proceedings had in the**  
 (15) **foregoing matter.**  
 (16) **I further certify that I am not an attorney**  
 (17) **for any of the parties hereto, nor in any way**  
 (18) **concerned with the cause.**  
 (19) **DATED this 13th day of September, 2004, in**  
 (20) **Honolulu, Hawaii.**  
 (21)  
 (22)  
 (23) \_\_\_\_\_  
**MYRLA R. SEGAWA, CSR NO. 397**  
**Notary Public, State of Hawaii**  
**My Commission Exp: 1-27-2005**  
 (24)  
 (25)